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December 4, 1998

HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation

In the Matter of Applications for Transfer of Control to AT&T Corp. of Licenses and Authorizations Held by Tele-Communications, Inc.

CS Docket No. 98-178

Dear Ms. Salas:

Leo J. Hindery, Jr., President of Tele-Communications, Inc., ("TCI") today sent the attached letter to Commissioner Susan Ness. Copies of this letter were also sent to Chairman William E. Kennard, Commissioner Harold Furchgott-Roth, Commissioner Michael Powell, Commissioner Gloria Tristani and the FCC staff indicated below.

In accordance with Section 1.1206(b)(1) of the Commission's rules, I am submitting two copies of this notice and the attached letter for inclusion in the above-captioned docket.

Sincerely,

Howard J. Symons

cc: Kevin Martin
Kyle Dixon
Tom Power

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TELE-COMMUNICATIONS, INC.

Leo J. Hindery, Jr.
President

December 1, 1998

Hon. Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Dear Commissioner Ness:

The enclosed answers respond to your letter of November 2. Thank you for the opportunity to explain TCI's plans for providing its subscribers with access to the Internet and the fullest array of online content. These are important and complex issues, and I welcome this opportunity to address your concerns.

Please do not hesitate to contact me if you would like to discuss these matters further.

Kind regards,

LJH:dc
Attachments

Cc: Hon. William E. Kennard
Hon. Harold Furchtgott-Roth
Hon. Michael Powell
Hon. Gloria Tristani

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Responses to Commissioner Ness's Questions

Q1: Please describe how cable modem customers of TCI will access other ISPs at cable modem speeds (not just dial-up modem rates). Will they have to subscribe to @Home?

A: In markets where it has upgraded its cable systems, TCI offers a cable Internet service ("TCI@Home") developed by the @Home Corporation. TCI@Home provides subscribers with high-speed Internet access and enriched, multimedia content that the customer can elect to view and use or completely bypass. It is a single offering comprising content and transport, just as the provision of Home Box Office over a cable system is a single offering of video programming and not the combination of "cable transport" and a "satellite cable service." Notably, TCI@Home provides an open environment through which subscribers can reach any available content on the World Wide Web, including the proprietary content and services provided by AOL, the Microsoft Network, Yahoo, Amazon.com and others. @Home also, however, provides unique content tailored for the broadband environment though partnerships with a vast array of unaffiliated providers; such offerings feature enhanced audio, video, and interactive functionalities. Because TCI@Home serves as the customer's Internet service provider ("ISP"), the question regarding access by "other ISPs" is, with respect, not germane.

TCI can provide its customers with the @Home service at "cable modem speeds" because, unlike our narrowband Internet service competitors,[1/] TCI and @Home are investing in the construction and deployment of a backbone network designed specifically to optimize the cable infrastructure's broadband capabilities. @Home's backbone and its regional data centers bring data closer to the user through caching and replication technologies, thereby avoiding the delays and congestion that often occur when end users access popular sites using the public Internet. @Home also provides end-to-end management of its network on a continuous basis, permitting it to address performance bottlenecks before they affect the user experience. Without @Home's specially-designed backbone, delivery of information to the consumer would be considerably slowed.

Neither the broadband connection between the subscriber and the cable headend nor the high speed and enriched content that make up the "@Home experience" are products that are or could be offered separately to a consumer and combined by him or her to create a service

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[1/] Notably, AOL sold its AOL Network Services backbone facilities to WorldCom in exchange for WorldCom's CompuServe subscribers. With that transaction, AOL abandoned its strategy of investing in facilities and turned its focus solely to providing content and other services. See Rajiv Chandrasekaran, AOL Shifts Its Strategic Direction; Content Focus Lauded; Deal's Price Questioned, Washington Post, Sept. 9, 1997, at C1; see also Rajiv Chandrasekaran, AOL's Man With a Mission; Marketing Whiz Bob Pittman Is Out to Make the Service a True Mass Medium, Washington Post, Feb. 15, 1998, at H1.

delivered at "cable modem speeds." To the contrary, these two inputs have been designed and rolled out on a fully integrated basis. TCI's plant must be upgraded to two-way and additional fiber nodes must be added. @Home, for its part, must invest in and construct regional data centers, install caching servers in the headends, extend the @Home network, implement sophisticated provisioning and network management systems, test the cable plant and, in some cases, provide localized content. Construction is timed in order to ensure that each party's upgrades are ready when they should be.

Requiring TCI to provide unbundled broadband access to third party ISPs would require TCI to offer a service it does not currently provide as a cable operator -- broadband transport -- which would in turn require significant additional investments by both TCI (e.g., the installation, engineering, and operation and maintenance of a "router" and the other equipment or facilities required to provide access to multiple ISPs) and the third party seeking such access (the construction of facilities between each of TCI's headends and the ISP's network). In addition, there would be transaction and facility costs of establishing a point of access for multiple providers, of transporting data between each of TCI's headends and the transmission facilities and computers of third party providers, and of establishing an appropriate price for "unbundled data transport." Because of the substantial additional investment required to enable TCI's cable systems to "interconnect" with multiple ISPs, the resulting Internet access service would be costlier than TCI@Home. It would also lack the high-speed delivery that @Home's backbone network makes possible.

Notwithstanding the foregoing, it is very much worth repeating that every customer of TCI@Home has the prerogative to bypass the @Home content by "double clicking" directly to the World Wide Web.

Q2: Will your subscribers have to subscribe to @Home in order to obtain access to AOL and other online service providers?

A: As described above, TCI@Home is a single offering that includes high-speed connectivity and content. Your question -- whether TCI subscribers must "subscribe to @Home" in order to obtain access to other online service providers ("OSPs") – suggests that there are two separate services. There are not. Neither the broadband transport to the headend nor the high speed and enriched content that make up the "@Home experience" are products that are or could be offered separately to a consumer. Rather, the TCI@Home service has been designed and rolled out on a fully integrated basis, using TCI's high-speed two way infrastructure and @Home's backbone network provisioning system and local caching functionality. AT&T and TCI recognize that denying their customers access to online services would not be in their or their customers' best interests. If an online service provider offers a service that TCI's customers want, then AT&T and TCI want customers to have unimpeded access to that provider. If that provider offers reasonable commercial terms for the arrangement, it will be in TCI's and @Home's interest to reach agreement voluntarily with that provider. Online service providers likewise have an incentive to reach agreement with TCI and @Home, because a provider can gain enhanced

advertising and e-commerce revenue through the additional TCI customers that will be reaching its service via TCI's network – a win-win situation. AOL and certain other OSPs are not content with this "win-win" world. They want the Commission to treat TCI like a common carrier and force TCI to provide unbundled access to its broadband cable facilities, which will greatly reduce AT&T's and TCI's economic incentives to upgrade TCI's network in the first place.

Even if an online service provider does not want to reach agreement with TCI or @Home, TCI@Home customers still can access that provider through their TCP/IP connections using a "bring-your-own-access plan" like that actively marketed by AOL. AOL's BYOA plan offers customers substantial savings over the conventional monthly charge for AOL. For $9.95 per month, compared with standard monthly charge of $21.95, BYOA enables any customer, including @Home customers, to access AOL's proprietary services and content.[2/] Customers subscribing to AOL under the BYOA plan connect directly to AOL by clicking on the AOL icon on their computer desktop. They do not "go through" @Home or view any @Home-provided content or screens. In fact, if they so desire, customers can remove the @Home icon from their desktop completely. For subscribers with a BYOA arrangement, TCI and the @Home backbone transport the subscriber's traffic to network access point on the public Internet, where, under a peering agreement, it is handed off and routed to AOL's server. Ironically, in the Section 706 NOI proceeding, AOL urged the Commission not to regulate peering arrangements, its chosen form of interconnection.

Finally, the implication of AOL's claim that its customers who use @Home are "paying twice" is that these customers are paying more than they should because they must purchase @Home content they allegedly neither want nor use. This claim ignores the economic realities of the service. In particular, it ignores the fact that the provision of content allows @Home to sell advertising and use the revenues to offset its network and transmission costs. Without these revenues, then, all other things being equal, @Home would have to recover its costs from other sources (or reduce its infrastructure investments). That would put upward pressure on TCI's charges for @Home. Rather than increase subscriber charges for @Home, the inclusion of content may actually reduce them.

Q3: Please describe your network architecture. Where are the open interfaces? Where can open interconnection be obtained and by whom?

[2/] There is little difference between customers who choose to access AOL through a separately-purchased ISP such as MSN, MindSpring, or Erols' Internet, and customers who use AOL's BYOA plan in connection with @Home. In light of complaints by AOL that subscribers must "pay twice," it is worth noting that AOL's BYOA customers can often obtain portal and e-mail functions from their ISP but must purchase these functionalities again from AOL itself in order to gain access to AOL's proprietary content. Notably, AOL refuses to sell dial-up access without its front-end advertising screens and other content.

A: AT&T-TCI's network architecture is shown schematically in the attached diagram. There will be open interfaces, as shown, at the customer premises, so that customers can use equipment from a variety of vendors to obtain services from AT&T-TCI. We are working with Cable Labs and the industry to implement open interfaces for set-top boxes and other customer premises equipment. When this work is completed, devices such as advanced set top boxes, cable modems, telephone equipment, and various integrated versions of these devices will operate on any broadband plant.

Q4: In light of your stated commitment to open interfaces, please explain how you envision interconnection between the combined TCI-AT&T network and other networks. Where will ISPs, IXCs, CLECs and ILECs gain access to your combined network? What do you envision as the terms and conditions of local access? What parts of Title II of the 1996 Act do you believe apply and what parts of Title VI?

A: The combined TCI-AT&T network will interconnect with other networks using standard interfaces and protocols. The attached diagram shows network points of interconnection.

Service providers utilizing TCP/IP, the standard protocol of the Internet, will be able to interconnect with the AT&T-TCI broadband network at public and private interconnection points under peering and transit arrangements. This is the normal way that Internet backbones interconnect with one another and with hosting facilities where large content providers frequently locate their services. Through these arrangements, service providers will be able to take advantage of the high speed delivery that cable plant makes possible. In addition, when AT&T-TCI begins providing its own dial-up telephone service over TCI's cable facilities, customers will be able to access ISPs of their choice as they do today with their traditional POTS lines.

For traditional circuit-switched traffic, ILECs, CLECs and IXCs will be able to interconnect as shown with AT&T-TCI circuit switches, as done by the industry today. This will enable termination and exchange of calls with ILECs, CLECs and IXCs alike.

To the extent that TCI's cable facilities offer telecommunications services as a local exchange carrier, they will be subject to the interconnection and other obligations imposed on all telecommunications carriers by sections 251(a) of the Communications Act, and to the resale, number portability, dialing parity, rights-of-way, and reciprocal compensation obligations imposed on all local exchange carriers by section 251(b).

In addition to the section 251(a) and (b) obligations that would be imposed on AT&T-TCI for its local telecommunications services, to the extent that AT&T-TCI provides basic telecommunications services it would also be subject to title II obligations applicable to CLECs, such as filing interstate tariffs, contributing to universal service funding, and CPNI requirements.

Title VI will continue to apply to "cable services," as defined in the Communications Act, provided by AT&T-TCI. Such services include video programming and cable Internet access.

The Telecommunications Act of 1996 expanded the definition of cable service to include "interactive services," including information services and enhanced services. As the legislative history explains, this change reflects the evolution of cable services from the traditional one-way provision of video programming to include interactive services. Under the expanded definition of "cable service," Internet access and other advanced services are considered cable services where, as here, they are provided by a cable operator over a cable system.

Q5: Are you aware of any FCC rulings acknowledging a distinction between Online Service Providers and ISPs?

A: The FCC acknowledged the distinction between OSPs and ISPs in a recent white paper, in which FCC staff explained that it is "still possible to differentiate 'online service providers' from 'Internet service providers' or 'ISPs.'" B. Esbin, Internet over Cable: Defining the Future in Terms of the Past, FCC Office of Plans and Policy Working Paper Series, No. 30, at 17 (August 1998). As support, the white paper cites ACLU v. Reno, a decision of the United States District Court for the Eastern District of Pennsylvania that describes the difference between "Internet service providers that typically offer telephone modem access to a computer or computer network linked to the Internet," and "the major national commercial 'online services,'" which offer "nationwide computer networks" and "extensive and well organized content," as well as access to the Internet. 929 F. Supp. 824, 833 (E.D. Pa. 1996), aff'd, 117 S.Ct. 2329 (1997). The U.S. District Court for the Southern District of New York made a similar distinction between Internet service providers and online services that "allow subscribers to gain access to the Internet while providing extensive content within their own proprietary networks." Shea v. Reno, 930 F. Supp. 916, 926 (S.D.N.Y. 1996), aff'd, 117 S.Ct. 2501 (1997).

The Commission also acknowledged the distinction between OSPs and ISPs in several different orders in the universal service proceeding. See, e.g., Joint Board Recommended Decision, 12 FCC Rcd 87, 323 ¶¶ 462-463 (1996) (distinguishing between "Internet Service Providers (ISPs) and online service providers that also offer Internet access"); Universal Service Report and Order, 12 FCC Rcd 8776, 9011-12 ¶¶ 441, 443 (1997) (acknowledging "two different types of information services," "pure" Internet access and Internet access "bundled" with content); Report to Congress, 13 FCC Rcd 11501, 11531-32 ¶¶ 62-63 (1998) (distinguishing between access providers, application providers, and content providers).

AT&T/TCI Network Architecture
Open Interfaces